

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT LODWAR

HIGH COURT CRIMINAL APPEAL NO. 22 OF 2015

DOMINIC LOYAN ADIR APPELLANT

VERSUS

REPUBLIC RESPONDENT

ORDER ON REVISION

DOMINIC LOYAN ADIR was charged along with others in the magistrate's court with the offence of **willfully and unlawfully obstructing police officers in execution of their duties contrary to section 103 (a) of the National Police Service Act**. The particulars of the offence are that on the 20th day of March, 2015 at Soweto village within Lodwar Township in Turkana County within the Republic of Kenya he willfully and unlawfully obstructed No.70764 Corporal Benard Moroko and No.91161 PC (D) Lawrence Eporal and a team of Kenya Police Reservists who were in due execution of their duties namely crackdown on illicit brews. He pleaded guilty to the charge by stating "**Ni Kweli**" when the charge was read to him; the facts were narrated by the prosecution and he admitted them to be true. He was convicted and after the court considered the mitigation he was sentenced to serve three years imprisonment.

Mr. Kimanthi, learned prosecuting counsel for the state pointed out to this court that subsequent to his conviction and sentence, the parents supplied to him and the court a copy of the certificate of birth which showed he was born on 1/7/1999. The subject was therefore at time of conviction and sentence aged 17 years old and therefore a child who would not be sentenced to a custodial sentence as this would be an unlawful sentence. He urged the court to use its revisionary powers under section 362 of the criminal procedure code to correct the error.

The powers of revision by the High Court are anchored in section 362 of the criminal procedure act which provides

362 The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court"

Under this provision the High Court can on its own motion call for the record, or as it this case the matter be brought to courts attention by the prosecution. The subject was charged with committing an offence contrary to section 103 (a) of the National police Service Act. Section 103 (a) provides

103 Any person who

- a) Assaults, resists, or willfully obstructs a police officer in the execution of the police officer's duties***
- b) Assaults, resists or willfully obstructs any person acting in the aid of the police officer***
- c) Attacks any animal belonging to the service***
- d) Intentionary or recklessly destroys police property***

Commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

The subject pleaded guilty and was sentenced to three (3) years imprisonment. The sentence cannot be said to be excessive. The only issue is that as has been pointed out is that the subject was a minor who would not be sentenced to imprisonment. The provisions of section 191 of the children Act 2001 provides methods of dealing with child offenders. These include discharge, probation, committing the offender to a fit person, committing the offender to a rehabilitation school, order of compensation, commitment to a borstal institution, placement in an educational institution, or probation hostel, community service or any other lawful order. The child offender as the subject is not supposed to be committed to imprisonment; I find the sentence in respect of him of 3 years imprisonment unlawful.

The only punishment applicable is any that is provided for under section 191 of the children Act. I therefore set aside the sentence of 3 years imprisonment, and direct that the probation officer do provide a probation officer's report to this court on 7/9/2016 for this court make the appropriate orders.

Dated, signed and delivered at Lodwar this 27th day of July, 2016.

S N RIECHI

JUDGE